

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #1	CCRB Case #: 201805676	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/14/2018 6:00 PM	Location of Incident: § 87(2)(b)	Precinct: 48	18 Mo. SOL 1/14/2020	EO SOL 1/14/2020	
Date/Time CV Reported Sat, 07/14/2018 6:49 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 07/16/2018 9:04 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Sandra Martinez	04343	955139	048 PCT
2. POM Robert Wichers	16306	958169	048 PCT
3. POM Michael Duggan	11111	954757	048 PCT
4. POM Janert Gil	18305	951771	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Duggan	Abuse: Police Officer Michael Duggan stopped § 87(2)(b) and an individual.	§ 87(2)(b)
B.POF Sandra Martinez	Abuse: Police Officer Sandra Martinez stopped § 87(2)(b) and an individual.	§ 87(2)(b)
C.POM Janert Gil	Abuse: Police Officer Janert Gil stopped § 87(2)(b) and an individual.	§ 87(2)(b)
D.POM Robert Wichers	Abuse: Police Officer Robert Wichers stopped § 87(2)(b) and an individual.	§ 87(2)(b)
E.POM Michael Duggan	Abuse: Police Officer Michael Duggan frisked § 87(2)(b)	§ 87(2)(b)
F.POF Sandra Martinez	Abuse: Police Officer Sandra Martinez frisked an individual.	§ 87(2)(b)
G.POM Michael Duggan	Abuse: Police Officer Michael Duggan searched § 87(2)(b)	§ 87(2)(b)
H.POM Robert Wichers	Abuse: Police Officer Robert Wichers threatened § 87(2)(b) and individuals with the use of force.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

§ 87(2)(b) filed this complaint on July 14, 2018 on the CCRB's call processing system.

On July 14, 2018 at approximately 6:00PM, § 87(2)(b) and an individual were sitting on the stoop of § 87(2)(b) in the Bronx when they were stopped by Police Officers Michael Duggan, Sandra Martinez, Janert Gil, and Robert Wichers, of the 48th Precinct (**Allegations A, B, C, D- Abuse of Authority: § 87(2)(g)**). PO Duggan allegedly frisked § 87(2)(b) while PO Martinez allegedly frisked the individual (**Allegations E and F-Abuse of Authority: § 87(2)(g)**). PO Duggan allegedly searched § 87(2)(b) (**Allegation G- Abuse of Authority: § 87(2)(g)**). PO Wichers allegedly brandished a knife in the direction of § 87(2)(b) and other unidentified individuals, were standing across the street (**Allegation H- Abuse of Authority: § 87(2)(g)**). No one was arrested or summonsed as a result of this incident. An attorney was consulted in regards to this case.

Surveillance footage was obtained from § 87(2)(b). The original footage can be found in Board Reviews 01 through 04. § 87(2)(b) also took a video of this incident with his cellphone; this video can be located in Board Review 05. These videos are also linked in the report where relevant.

Findings and Recommendations

Allegation A-Abuse of Authority: Police Officer Michael Duggan stopped § 87(2)(b) and an individual.

Allegation B-Abuse of Authority: Police Officer Sandra Martinez stopped § 87(2)(b) and an individual.

Allegation C-Abuse of Authority: Police Officer Janert Gil stopped § 87(2)(b) and an individual.

Allegation D-Abuse of Authority: Police Officer Robert Wichers stopped § 87(2)(b) and an individual.

§ 87(2)(b) testified that at the time of the incident, he was standing in front of § 87(2)(b) when two black males sat on the stoop of § 87(2)(b) (Board Review 06). § 87(2)(b) did not know the names of either of these men but stated he knew them from around the neighborhood. While on the steps of the building, the man on the left side of the stoop was smoking "adult cigarettes." When asked if the men were smoking marijuana, § 87(2)(b) responded that he did not think that they were because he did not smell marijuana but if they were, he would not tell that to the undersigned on record. When the officers arrived at the location, no one was smoking anything. § 87(2)(b) did not see the men dispose of the cigarettes. A four door black sedan pulled up in front of § 87(2)(b) and four officers exited the vehicle and approached the two men on the stoop. § 87(2)(b) did not hear any conversation between the officers and the two men as he was too far away to hear.

§ 87(2)(b) was identified as a victim in this case because PO Gil conducted a warrant audit for him at the time of the incident (Board Review 07). Despite attempts by the undersigned to obtain a statement from § 87(2)(b) in regards to this incident, he could not be reached (Board Review 08). Absent a name, contact information, or any identifying police documentation, the other individual in this case could not be identified.

At the 6:01:31PM timestamp in the surveillance video obtained from § 87(2)(b) smoke vapors are observed emanating from § 87(2)(b)'s mouth (Board Review 09). At 6:01:44PM, an unmarked sedan pulls up in front of the building. PO Duggan, PO Martinez, PO Gil, and PO Wichers then exit the car and approach the men.



Case 201805676 Video.mp4

None of the officers interviewed in regards to this case had any independent recollection of this incident; they were interviewed approximately two months after the incident. After watching the surveillance footage, PO Duggan and PO Wichers testified that they stopped the men because they observed them smoking what appeared to be a marijuana cigarette; neither officer recalled smelling any marijuana smoke at the time (Board Reviews 10, 11). The video also refreshed PO Martinez's recollection of the incident; she testified that she saw the men smoke a marijuana cigarette and also smelled the odor of marijuana, which led to them being stopped (Board Review 12). The video did not refresh PO Gil's recollection of the incident; he did not recall seeing or smelling marijuana and did not know why the men were stopped (Board Review 13). None of the officers recalled who made the decision to stop the men.

NYS Penal Law 221.10 states that a person is guilty of criminal possession of marijuana in the fifth degree when he knowingly and unlawfully possesses marijuana in a public place, and such marijuana is burning or open to public view. (Board Review 13). People v. De Bour, allows officers to stop individuals for whom they have reasonable suspicion are engaged in criminal activity (Board Review 14).

§ 87(2)(g)

Allegation E-Abuse of Authority: Police Officer Michael Duggan frisked § 87(2)(b)

Allegation F-Abuse of Authority: Police Officer Sandra Martinez frisked an individual.

§ 87(2)(b) testified that PO Duggan and either PO Wichers or PO Gil each took one individual aside and patted them down from their neck down to their ankles, feeling their waistbands.

At 6:02:05PM in the surveillance footage, PO Duggan approaches § 87(2)(b) while PO Martinez approaches the unidentified individual. Both officers then conduct a frisk of the men.

PO Duggan acknowledged that he conducted a frisk of one of the individuals after seeing the surveillance footage of him doing so. PO Duggan patted the individual down because he suspected him of having marijuana. PO Duggan did not recall seeing any bulges on the individual's person and did not recall suspecting either of the individuals of being armed.

PO Martinez recalled asking the male that she spoke to if he had any weapons on him and that male responded that he did not. PO Martinez then frisked the male for any weapons. PO Martinez did not recall believing that the male had a weapon on his person prior to frisking him but stated that she frisked him as a precautionary measure for the officers' safety. PO Martinez stated that she usually does a "quick pat down" when stopping civilians.

Neither PO Gil nor PO Wichers recalled suspecting either of the individuals of being armed nor did they describe any bulges or specific safety concerns.

An officer may frisk an individual when he reasonably suspects that he or she is in danger of physical injury by virtue of the individual being armed. People v De Bour 40 N.Y.2d 210 (1976) (Board Review 14). Patrol Guide Procedure 212-11 states that the purpose of a frisk is to ensure the safety of the officer not to locate evidence of a crime, such as drugs (Board Review 18).

§ 87(2)(g)

Allegation G-Abuse of Authority: Police Officer Michael Duggan searched § 87(2)(b)

§ 87(2)(b) did not recall seeing any officer go into any of the male's pockets and no officer ever pulled anything out of the men's pockets. While watching the officers interact with § 87(2)(b) and the individual, PO Wichers took a knife from his own pants pocket. § 87(2)(b) did not think that PO Wichers got the knife from one of the two men because he saw PO Wichers reach into his pocket for the knife.

At 6:02:16PM in the timestamp of the surveillance footage, PO Duggan reaches into § 87(2)(b)'s left pants pocket and pulls out an unidentifiable object. At 6:02:20PM, PO Duggan hands the object to PO Wichers.

PO Duggan stated that while he was patting down § 87(2)(b) he felt a hard object. PO Duggan did not know where this hard object was but assumed that it was in one of his pants pockets. PO Duggan could not recall the shape, size, or any identifying characteristics of the hard object. PO Duggan removed the object "for everyone's safety" because it may have been a weapon. PO Duggan did not recall what the object was and did not recall whether it was a knife or not.

Neither PO Martinez, PO Gil, nor PO Wichers recalled a knife, or any weapon, being recovered during this incident. None of the officers could identify the object in the video.

To justify a search, an officer must have probable cause to believe that the person has committed a crime. People V. Debour, 40 N.Y.2d 210 (1976) (Board Review 14). When, during the course of a frisk, an officer feels an unknown and unidentifiable hard object, which the officer can neither identify as a weapon nor as something that is not a weapon, the officer does not have the right to remove the object in order to determine if it is a weapon. People v. Clark, 213 A.D.2d 946 (App. Div. 1995) (Board Review 15, 16)

§ 87(2)(g)

§ 87(2)(g)

Allegation H-Abuse of Authority: Police Officer Robert Wichers threatened § 87(2)(b) and individuals with the use of force.

§ 87(2)(b) testified that he was standing with a few of his neighbors at the time of the incident. § 87(2)(b) refused to provide the names and contact information of these neighbors. § 87(2)(b) stated that when PO Wichers took out the knife from his pocket, he flicked it open, and started waving it back and forth while making eye contact with § 87(2)(b) and his neighbors. PO Wichers passed the knife back and forth from his left to his right hand numerous times. While the incident was happening, § 87(2)(b) did not think much of what PO Wichers was doing but looking back on it, § 87(2)(b) believed that PO Wichers was trying to threaten and intimidate § 87(2)(b) and his neighbors with the knife. One of § 87(2)(b)'s neighbors asked PO Wichers why he was showing them a knife. § 87(2)(b) could not recall if PO Wichers responded to this at all.

§ 87(2)(b) took a video of this portion of the incident with his cell phone (Board Review 17). At 0:10 in the video, PO Wichers holds what appears to be a knife in his hands. PO Wichers flicks the knife back. PO Gil never points the knife toward the civilians. At :23 in the video, an unidentified female says, "Officer, are you showing us a knife? Ain't there enough stabbings?" PO Wichers responds by saying, "Facts." There is no further interaction between the officers and civilians.



Case 201805676 Cell Video.mp4

PO Wichers stated he did not recall interacting with any individuals apart from the two males on the stoop. After viewing the above video, PO Wichers stated that it did not refresh his recollection. PO Wichers did not recall if any civilians interfered with the officers' law enforcement activities. PO Wichers could not identify the object that was in his hand. PO Wichers was asked if the object was a knife; PO Wichers stated he could not tell. The undersigned noted that it looked like PO Wichers was holding something up to the civilians; PO Wichers stated he did not recall this and that he did not know what he was doing. PO Wichers did not know what the civilians on the other side of the street were doing as they cannot be seen in the video. PO Wichers did not recall if a knife was vouchered during this incident.

None of the other officers recalled interacting with civilians across the street and watching the above video did not refresh their recollection. None of the officers could identify the object in PO Wichers' hand and when asked specifically if it was a knife, they said they could not tell.

No knife or any other weapon was vouchered in connection with this incident.

§ 87(2)(g)

§ 87(2)(g) [REDACTED]

§ 87(4-b), § 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) and § 87(2)(b) have been parties.
- Police Officer Michael Duggan has been a member of service for five years and has been a subject in one closed CCRB complaint and one allegation, which was not substantiated.

- 201803747, in which PO Duggan is the subject of two allegations, is scheduled to be reviewed during Panel 1C-2019.
- § 87(2)(g) [REDACTED]
- Police Officer Sandra Martinez has been a member of service for five years and has been a subject in four closed CCRB complaints and five allegations, none of which were substantiated.
 - 201802431, in which PO Martinez is the subject of five allegations, is scheduled to be reviewed during Panel 3A-2019.
 - 201803747, in which PO Martinez is the subject of one allegation, is scheduled to be reviewed during Panel 1C-2019.
 - § 87(2)(g) [REDACTED]
- Police Officer Janert Gil has been a member of service for six years and has been a subject in one closed CCRB complaint and one allegation, which was not substantiated.
 - 201802126, in which PO Gil is the subject of two allegations, is scheduled to be reviewed during Panel 1C-2019.
 - 201803747, in which PO Gil is the subject of one allegation, is scheduled to be reviewed during Panel 1C-2019.
 - § 87(2)(g) [REDACTED]
- Police Officer Robert Wichers has been a member of service for three years and has been a subject in one closed CCRB complaints and one allegation, which was not substantiated.
 - 201802431, in which PO Wichers is the subject of one allegation, is scheduled to be reviewed during Panel 3A-2019.
 - § 87(2)(g) [REDACTED]

Mediation, Criminal, and Civil Histories

- This case was not suitable for mediation.
- As of January 3, 2019, the Office of the Comptroller has no record of a notice of claim filed in connection with this incident.
- § 87(2)(b) [REDACTED]
- According to OCA, § 87(2)(b) [REDACTED] does not have any criminal convictions.

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer:

Signature

Print Title & Name

Date